

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HATTIE M. BARNES and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 01-1336; Submitted on the Record;
Issued February 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of August 30, 2000.

On October 27, 1998 appellant, a 28-year-old letter carrier, injured her right knee while driving a postal vehicle. She filed a claim for benefits on the date of injury, which was accepted by the Office for right knee strain. Appellant returned to light duty with restrictions on November 16, 1998 and missed work intermittently until June 9, 1999 when she stopped working. She has not returned to work since that date. The Office paid appellant compensation for appropriate periods. The Office subsequently expanded its acceptance on June 18, 1999 to include the condition of reflex sympathetic dystrophy.

In order to determine whether appellant continued to have residuals from her accepted conditions causing total disability, the Office referred appellant for a second opinion examination with Dr. Mark N. Levin, a Board-certified orthopedic surgeon.

In a report dated August 5, 1999, Dr. Levin, after reviewing the statement of accepted facts and appellant's medical history, stated that appellant had marked subjective discomforts which were out of proportion to objective findings and consistent with symptom magnification. He advised that appellant's examination was filled with inconsistencies and noted that from an orthopedic standpoint, he could find no evidence of reflex sympathetic dystrophy and no objective cause for appellant's findings relating to her work injury. Dr. Levin concluded that appellant should be capable of some functional work activity.

In a supplemental report dated October 26, 1999, Dr. Levin stated that he had reviewed the results of a magnetic resonance imaging (MRI) scan and had concluded that it showed no evidence of disc herniation or nerve impingement. He stated that the MRI indicated no objective pathology in the lumbar spine to correlate with appellant's subjective complaints of pain and recommended a functional capacity evaluation with validity measurements, because appellant should be capable of performing activities. Dr. Levin reiterated that, from an objective

standpoint, there was no reason why appellant should be unable to do full-duty work activities and that she was unable to do her work strictly on the basis of her subjective complaints of pain.

The Office found that there was a conflict in the medical evidence between Dr. Levin and Dr. Michael F. Gonzales, Board-certified in physical medicine and rehabilitation and appellant's treating physician, regarding whether appellant continued to have residuals from her accepted conditions. An impartial medical examination was scheduled with Dr. James W. Milgram, Board-certified in psychiatry and neurology, on July 19, 2000.

In a July 19, 2000 report, Dr. Milgram, after examining appellant, reviewing the medical records and stating findings on examination, found nothing in his examination to suggest sympathetic reflex dystrophy. He stated:

“In my opinion appellant does not have objective disease preventing her from performing full and regular work. I think she has been treated for alleged pain syndrome with marginal indications. [Appellant] probably has never had reflex sympathetic dystrophy. Even if she has had it, it has gone away now and she has a normal joint. [Appellant] can perform regular work as a mail carrier without restrictions. I feel that she is intentionally exaggerating her symptomatology and expressing symptoms, which have no foundation in real disease. I do not feel that [appellant] has any back symptomatology related to alleged knee symptomatology or pathology.”

On July 31, 2000 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the weight of the medical evidence, as represented by Dr. Milgram's referee opinion, established that her employment-related disability had ceased and that she could return to full-time work without restrictions. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. She did not respond to this notice within 30 days.

By decision dated September 1, 2000, the Office terminated appellant's compensation, effective August 30, 2000.

By letter dated August 29, 2000, received by the Office on August 31, 2000, appellant requested reconsideration of the Office's July 31, 2000 proposed termination. The Office construed this letter as a request for reconsideration of the September 1, 2000 termination. Appellant did not submit any additional medical evidence with her request.

By decision dated September 22, 2000, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated October 6, 2000, appellant requested reconsideration. In support of her request, appellant submitted an October 2, 2000 report from Dr. Gonzales, who expressed his disagreement with the opinions of Drs. Levin and Milgram and stated findings on examination. He advised that appellant did have objective findings of complex regional pain syndrome and that she still required treatment consisting of block injections and physical therapy. Dr. Gonzales also submitted a December 4, 2000 report in which he outlined work restrictions of working no

more than four hours a day, no lifting, reaching, pushing or pulling more than five pounds and intermittent sitting and standing. He advised that appellant required the use of crutches and could not work at a job which required her to stand or walk.

By decision dated January 12, 2001, the Office denied modification of the September 22, 2000 termination decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In this case, the Office based its decision to terminate appellant's compensation on Dr. Milgram's July 19, 2000 referee medical report. He advised that if appellant had reflex sympathetic dystrophy, it had resolved and that there were no objective findings in his examination to suggest sympathetic dystrophy. He opined that she was exaggerating her symptomatology and could perform full and regular work as a mail carrier without restrictions. The Office relied on Dr. Milgram's opinion in its September 1, 2000 termination decision, finding that her employment-related disability had ceased and that she could return to full-time work without restrictions.

The Board finds that Dr. Milgram's referee opinion negated a causal relationship between appellant's accepted condition and disability and her October 27, 1998 employment injury. Dr. Milgram found that she no longer had any residuals from the employment injury and could return to her regular duty. His report is sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office properly accorded Dr. Milgram's opinion the special weight of an impartial medical examiner.³ The Board finds that Dr. Milgram's opinion constituted sufficient medical rationale to support the Office's September 1, 2000 decision terminating appellant's compensation.

Following the Office's termination of compensation, the burden of proof in this case shifted to appellant, who requested reconsideration of the September 1, 2000 termination decision. Her initial request, which was not accompanied by additional medical evidence, was denied by the Office by nonmerit decision dated September 22, 2000. Appellant again requested reconsideration by letter dated October 6, 2000. She submitted reports dated October 2 and December 4, 2000 from Dr. Gonzales, who essentially reiterated his earlier findings and opinion that appellant still required treatment and had residual disability stemming from the October 27, 1998 employment injury. He advised that appellant had work restrictions, required the use of

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Gary R. Seiber*, 46 ECAB 215 (1994).

crutches and should be prevented from working at a job which required her to stand or walk. In this regard, Dr. Gonzales merely reiterated his opinion concerning appellant's diagnosis and disability. As Dr. Gonzales was on one side of the conflict which was resolved by Dr. Milgram, his additional reports are insufficient to overcome the special weight accorded to the impartial medical specialist reports or to create a new conflict.⁴ Accordingly, the Board affirms the Office's January 12, 2001 and September 22, 2000 decisions, which found that appellant failed to submit evidence sufficient to modify the September 1, 2000 termination decision.

The decisions of the Office of Workers' Compensation Programs dated January 12, 2001, September 22 and September 1, 2000 are hereby affirmed.

Dated, Washington, DC
February 21, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Virginia Davis-Banks*, 44 ECAB 389 (1993).